

Memories of Genocide Committed Against the Armenian People: A Swiss Conviction for Denial and its Overruling by the European Court of Human Rights

Unlike the Holocaust, the existence of which was confirmed by the International Military Tribunals at Nuremberg, the Armenian genocide was never recognized in a court of law. Much debate has surrounded the issue, one such instance being the case of *Perinçek v. Switzerland*. Dr. Doğu Perinçek is a Turkish political activist, and former chair of the Turkish Workers' Party. He was convicted by a Swiss court for statement he made to deny the Armenian genocide, a sentence that he challenged successfully before the European Court of Human Rights, based on free speech rights.

2007 Swiss District Court

In March 2007, a Swiss District court in Lusanne found Perinçek guilty of racial discrimination, following repeated visits to Switzerland in which he publicly denied the Armenian genocide, including a July 2005 speech where he referred to the genocide as “an international lie”. Subsequently, he was fined 3000 Swiss francs and spent 90 days in prison.¹ He was also given a suspended fine of 9,000 Swiss francs and was forced to give a symbolic gift to the Swiss-Armenian organization in the form of 1,000 Swiss francs.² Genocide denial is a crime under article 261 of the Swiss penal code, where it states,

Any person who publicly incites hatred or discrimination against a person or a group of persons on the grounds of their race, ethnic origin, or religion,
any person who publicly disseminates ideologies that have as their object the systematic denigration or defamation of the members of a race, ethnic group or religion
any person who with the same objective organizes, encourages or participates in propaganda campaigns,

¹ <http://www.swissinfo.ch/eng/genocide-denial-trial-raises-many-questions/5762840>

² <http://www.swissinfo.ch/eng/swiss-court-rejects-appeal-from-turkish-politician/5960168>

any person who publicly denigrates or discriminates against another or a group of persons on the ground of their race, ethnic origin or religion in a manner that violates human dignity, whether verbally, in writing or pictorially, by using gestures, through acts of aggression or by other means, or any person who on any of these grounds denies, trivializes or seeks justification for genocide or other crimes against humanity, any person who refuses to provide a service to another on the grounds of that person's race, ethnic origin or religion when that service is intended to be provided to the general public, is liable to a custodial sentence not exceeding three years or to a monetary penalty.³

After the trial, he did appeal the verdict, and by June the court had affirmed its decision. Perinçek then took the appeal to the Swiss Federal Court, where again the court confirmed the sentence given to Perinçek in December of 2007. He then appealed the decision to the European Court of Human Rights.

2013 European Court of Human Rights

In November 2013, the case was brought before the European court of Human Rights. The chamber consisted of Guido Raimondi (President), Peer Lorenzen, Dragoljub Popović, András Sajó, Nebojša Vučinić, Paulo Pinto de Albuquerque, Helen Keller, and Stanley Naismith. The judgment was delivered on December 17th, 2013, which consisted out an outline of the circumstances of the case, relevant domestic and international law, relevant comparative law, application of the law, and the concurring and dissenting opinion.

Relevant Domestic and International Law

Article 261 of the Swiss Criminal Code was the original law used to convict Perinçek.⁴ Additionally, the Court used the Convention on the Prevention and Punishment of the Crime of Genocide, specifically these Articles:⁵

³ Swiss Criminal Code of 21 December 1937 (Status as of 1 January 2014) <https://www.admin.ch/opc/en/classified-compilation/19370083/201501010000/311.0.pdf>

⁴ Perinçek v. Switzerland Judgment pg. 7

⁵ Perinçek v. Switzerland Judgment pg. 10-11

Article I: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

Article II: “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

Article III:

“The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.”

Article V:

“The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.”

Other relevant international law includes Article 6 of the Charter of the International Military Tribunal,⁶ Articles 5, 6 and 7 of the Rome Statute of the International Criminal Court,⁷ the judgment of September 2, 1998 in the case of *The Prosecutor v. Akayesu* in the Trial Chamber of the International Criminal Tribunal for Rwanda,⁸ the judgment of the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* from February 26, 2007,⁹ Articles 2, 3, 19, and 20 of the United National International Convention on the Elimination of All Forms of Racial

⁶ Perinçek v. Switzerland Judgment pg. 11

⁷ Perinçek v. Switzerland Judgment pg. 11-12

⁸ Perinçek v. Switzerland Judgment pg. 12-13

⁹ Perinçek v. Switzerland Judgment pg. 13-14

Discrimination,¹⁰ and UN Human Rights Committee General Comment no. 34 concerning Article 19 of the Covenant.¹¹

Comparative Law and Practice

In 2006, the Swiss Institute of Comparative Law produced a report that analyzed the laws of the United States, Canada, and fourteen European countries (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, Sweden, and the United Kingdom) in the context of crimes against humanity and genocide.¹² The report found that Spain, France, and Luxembourg have pushed for the most extensive laws. But for many countries, only denial of acts committed during World War Two is a punishable offense, which is a common underlying theme surrounding legal memory of atrocities; the Holocaust is frequently upheld as the only genocide significant enough to warrant memory law. The report also found that courts have stepped in when nations lack laws to ensure that genocide memory is upheld, but these interventions have been politically divisive.

Alleged Violation of Article 10 of the Convention

Though a myriad of articles from various laws were considered in the decision, the report by the ECHR states,

Relying on Article 10 of the Convention, the applicant complained that the Swiss courts had breached his freedom of expression by convicting him for having publicly stated that there had never been an Armenian genocide. He argued, in particular, that Article 261 *bis* § 4 of the Swiss Criminal Code was not sufficiently foreseeable in its application, that his conviction had not been justified by the pursuit of a legitimate aim and that the alleged breach of his freedom of expression had not been “necessary in a democratic society.”

Article 10 provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not

¹⁰ Perinçek v. Switzerland Judgment pg. 14-16

¹¹ Perinçek v. Switzerland Judgment pg. 16-18

¹² Perinçek v. Switzerland Judgment pg. 20-21

prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 41 of the Convention was also a main factor in the decision. It states:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

Decision

The Court ultimately decided that the complaint under Article 10 was admissible, with a vote of five votes to two. The Raimondi and Sajó authored the joint concurring opinion,¹³ and Vučinić and Pinto de Alburquerque wrote the dissenting opinion.¹⁴

Appeal by Switzerland

After the ruling by the European Court of Human Rights, Switzerland appealed the decision. On June 3, 2014, the European Court of Human Rights announced that it would allow the appeal and give the Grand Chamber the right to clarify the allowed usage of the Swiss Criminal Code in regards to racism. On January 28, 2015, the first hearing was held. Perinçek is represented by Professor Laurent Pech, who is head of the Department of Law at Middlesex University in London. Switzerland is represented by Frank Schürmann Turkey is represented as a

¹³ Perinçek v. Switzerland Judgment pg. 55-60

¹⁴ Perinçek v. Switzerland Judgment pg. 61-77

third party by Professor Stefan Talmon, who is a professor of law at Oxford University. Armenia is also represented as a third party by Doughty Street Chambers, more specifically by Amal Clooney and Geoffrey Robertson. Only the first hearing has been held, and the case is ongoing.

Responses by Armenian Interest Groups

In 2007, the public prosecutor was a member of the Swiss-Armenian association, and members of the association were fairly outspoken. Co-president Sarkis Shahinian stated, “We will finally know if denigrating our people and tarnishing our memory is a crime in Switzerland.”¹⁵ The organization had originally filed the complaint to the court in July of 2005.

The International Institute for Genocide and Human Rights Studies of the Zoryan Institute has also been vocal throughout the case. President K.M. Sarhissian and Raffi Bedrosyan represented the institute as observes at the Grand Chamber hearing. The institute also worked with the Human Rights Association of Turkey and the Truth Justice Memory center to submit a third-party amicus brief.

Many other Armenian interest groups had extensive sections on their websites relating to this particular case. Though all of the information available was exclusively pro-Armenia and anti-Perinçek, most institutes did not provide any publications of their own, but rather simply provided links to other media reports surrounding the case.

¹⁵ <http://www.swissinfo.ch/eng/genocide-denial-trial-raises-many-questions/5762840>

Related Sources

European Court of Human Rights Case Law Analysis

<http://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis&c=>

European Court of Human Rights *Perinçek v. Switzerland* Decision

[http://hudoc.echr.coe.int/eng?i=001-139276#{\"itemid\":\[\"001-139276\"\]}](http://hudoc.echr.coe.int/eng?i=001-139276#{\)

ECHR Blog

<http://echrblog.blogspot.nl/2014/01/perincek-judgment-on-genocide-denial.html>

2013 Case Reference List

http://www.echr.coe.int/Documents/Cases_list_2013_ENG.pdf

2015 Appeal to the ECHR –Testimonies and Other Sources

<http://armenians-1915.blogspot.com/2015/01/3527-Giordano-Bruno-Was-WitchHunted-Burnt-After-Criticizing-Established-Opinions.-No-Freedom-If-Opinions-Prejudices-Cannot-Be-Discussed-by-Perincek.html>

2015 Appeal

Full hearing

https://www.youtube.com/watch?t=15&v=JfXR_izzcac

Dogu Perincek's speech

<https://www.youtube.com/watch?t=19&v=YHoDOq16YQw>

Georg Kostanyan's speech

https://www.youtube.com/watch?v=2hL8xv_b4F0

Amal Clooney's speech

https://www.youtube.com/watch?v=m_qw8UTPGYI

Geoffrey Robertson's speech

<https://www.youtube.com/watch?v=62dDR-K6KpY>

Geoffrey Robertson and Amal Clooney

https://www.youtube.com/watch?v=_eGYdC0uTr8